

# SENTENCING COMMISSION MINUTES

<b>Committee</b>	<b>Utah Sentencing Commission</b>
<b>Date</b>	Wednesday, October 5, 2011
<b>Time</b>	Noon – 2 p.m.
<b>Location</b>	Utah State Capitol Complex, Senate Bldg., Copper Room
<b>Members Present</b>	Judge Kevin Allen, Patrick Anderson, David Brickey, Paul Boyden, Susan Burke, Judge Janice Frost, Curt Garner, Marlene Gonzalez, Ron Gordon, Rep. Richard Greenwood, Judge Thomas Low, Benjamin McMurray, Mark Moffat, Judge Ric Oddone, Judge Gregory Orme, Robyn Williams for Tom Patterson, Rep. Jennifer Seelig, Sy Snarr, Senator Dan Thatcher, Kirk Torgensen, Carlene Walker
<b>Members Excused</b>	Senator Ben McAdams, Chief Ed Rhoades, Doyle Talbot, Sheriff James Winder
<b>Staff &amp; Visitors</b>	Staff: Jennifer Hemenway, Jo Lynn Kruse, Dr. Ben Peterson, Jacey Skinner, David Walsh Visitors: David Bennett, Sim Gill, Rep. Litvack, Mike Postma, Rep. Ray
<b>Agenda Item</b>	<b>Welcome and Approval of Minutes</b>
<b>Notes</b>	Carlene Walker called the meeting to order and welcomed everyone. Mark Moffat made the <b>motion</b> to approve the June and August minutes. Paul Boyden <b>seconded</b> the motion which <b>passed unanimously</b> .
<b>Agenda Item</b>	<b>Introduction of New Members</b>
<b>Notes</b>	Carlene introduced Senator Thatcher, who has been appointed to serve as our new republican senator and Susan Burke the new Director of the Division of Juvenile Justice Services.
<b>Agenda Item</b>	<b>Early Case Resolution Sentencing Practices</b>
<b>Notes</b>	<p>David Litvack, introduced the Early Case Resolution program (ECR). ECR was developed under a grant from CCJJ to the DA's office during Lohra Miller's tenure. It was a two year grant: one year of planning and one year of assessment. The intent of the program was to reach "the same justice sooner" in handling felony cases in the criminal justice system in Salt Lake County. The model requires that offenders make it to court sooner and that defense attorneys receive discovery and an offer from the prosecutor sooner so that a resolution can be reached sooner. Part of the resolution includes an agreement as to what the sentence will be.</p> <p>Patrick Anderson explained that he has assigned eight of his experienced attorneys to work exclusively in ECR. Those attorneys should have discovery and an opportunity to meet with their clients before the first hearing. Patrick explained that the cases they are dealing with are intended to be the "low hanging fruit." Because even these cases have traditionally taken a long time to reach resolution, his clients do not feel that a sentence that includes any credit for time served is actually a penalty for the crime they committed; rather at that point they are not receiving any kind of penalty for their violation. When the resolution is reached more quickly, the sentence, in the defendant's mind, is actually related to their offense. The hope is that this will reduce recidivism.</p> <p>Patrick pointed out the need to use risk and needs assessments and that while they are not currently being used, they are working on trying to incorporate their use. They are using the "TCU" a drug and alcohol assessment, in drug cases and that those are being done internally in the LDA's office.</p> <p>Sim Gill then explained that ECR is intended to be a collaborative partnership between prosecutors, defense and courts to make sure that the court never loses control of its cases. According to Sim the goal is not "the same justice sooner, but "better justice faster." He added that because of our incarceration rate and financial limitations we need to think about smarter sentencing options and try to introduce cost effectiveness and efficiency into our system. Much of that is in his office; he knows that they need to change their screening habits because simply filing a case uses resources by putting it into the system. He continued that they need to do things faster: when they know what the offer and resolution will be early on, the case can and should be resolved early.</p>

Sim suggested that he is a big proponent of getting and using risk assessments. And that they are looking at trying to incorporate the use of the LSI on every offender as they are booked into jail.

The goal is to resolve cases within 30 days of filing. And so far they are able to remove 31% of their net filings within the first 30 days.

Sim continued that this is a work in progress, that it will be altered and that they are open to all suggestions and input. He sees this as phase one and sees phase two as the incorporation of "good evidence, data driven resources." Where they have secondary components based on "good evidence, data driven resources," where his judges and prosecutors and defense attorneys can make referrals to get offenders into meaningful early treatment.

Patrick Anderson added that his attorneys take a different approach with these cases because they do not want to see these clients again. They are trying to get them into treatment.

Senator Thatcher asked if an offender challenges a search or files a motion based upon a constitutional claim, is the case removed from ECR? Patrick responded that, yes, it is. Senator Thatcher then pointed out that if the benefit was to get a better offer/sentence the defendants should not miss out on that by exercising their constitutional rights. Sim and Patrick suggested that their rights won't be compromised that they just can't resolve the case as quickly but that because they are hopefully resolving a large number of cases the motion should be able to be heard and resolved more quickly than it would be otherwise. Patrick explained that traditionally the system was set up to benefit procrastination, to fatigue the system to try to get a better offer. ECR is set up to reverse that.

Benji McMurray suggested that maybe we have missed the point. That if the problem is we are keeping people in jail too long, perhaps we need to look at our pre-trial release standards to avoid keeping people unnecessarily. Sim stated that they are looking at that as well.

Judge Allen asked what the purpose of the judge is in this system, if the parties are simply telling the judge what is going to happen. Sim and Patrick suggested that that the judge's role is to question. They further stated that they are sharing criminal history information with the judges and that they are getting all of the information that they need. Judge Allen stated that he does not sentence in felony cases without a presentence report. Judge Allen asked when the information is being given to the judge if the judge is being asked to approve a sentence before a plea is entered. Sim stated that they resolve cases routinely in his district without the use of presentence reports that they "don't have the resources" to do that. He stated that experienced prosecutors determine when they need to get a "full blown presentence report."

Patrick explained that in ECR when the judge has expressed a concern that they need more information, his office has "stepped up" and provided that additional information. He also suggested that AP&P is consulted about the resolution of the case.

Ron Gordon then asked about the Sentencing Guideline's role in ECR. The guidelines are established according to statute by the Sentencing Commission. Sim answered referencing presentence reports and the LSI and by stating that he is a proponent of smarter sentencing. Patrick then stated that most of the cases are resolved as Class A misdemeanors or are offenses that would fit into a probation category or a split cell. If someone fits into a prison category, they ask for a presentence report. He added that if they were sentencing people who would fit into that category without using the guidelines or a presentence report they would be doing disservice to the state. He really thinks they are working with the low and midrange people.

Kirk Torgensen stated that he agrees that we need to look at how these cases fit into the sentencing guidelines.

Ron stated that one of the reasons the Commission was originally charged to develop guidelines was so that the Board of Pardons and the courts would have an idea as to where a case would be, so that

	<p>they would have a starting point and we would have some consistency across the state. Ron asked what is being used to determine the seriousness of the case and what the victims think.</p> <p>Judge Allen asked if there were any specific guidelines dictating what is or what is not resolved in ECR. Patrick and Sim stated that there are, but they are not defined.</p> <p>David Brickey then stated that it sounds like Salt Lake County has invented its own circuit court system and has developed its own sentencing system when we have been working on uniformity across the state. He then asked what would be necessary for him to set up something in his own county to move cases more quickly.</p> <p>Carlene Walker then thanked David, Sim, and Patrick, and asked them, at a minimum, to keep us informed. She stated that concerns had been expressed and she would like them to report back with the data, and the fiscal impact to know if they really are saving time and money. She would like to be kept informed of changes that are made.</p> <p>Paul Boyden then stated that the judge is really in the driver's seat, more so than anyone ever thought. He stated that he knew that some of the judges felt like they were getting at least as good of information that they get in a presentence report and that they are avoiding misstatements that he thinks are common in presentence reports because everyone is there to make corrections. He acknowledged that the lack of a risk assessment is a legitimate problem because they could "potentially" improve sentencing.</p>
<b>Agenda Item</b>	<b>Retail Theft Amendments</b>
<b>Notes</b>	<p>Rep. Paul Ray presented a draft of Theft Amendments for the 2012 general legislative session and asked the Commission for remarks and suggestions. The bill modifies the Criminal Code by creating an offense of commercial burglary regarding an individual who returns and commits retail theft again at a property where the individual has previously been prohibited from returning. The bill also alters the penalty structure for repeat theft offenses, making the penalty for a third offense one degree higher, based upon value than it would be for a first offense. This is different from the current scheme where a third offense is a third degree felony regardless of value.</p> <p>Judge Orme suggested changing the words "commercial burglary". The Commission will offer different wording and give their suggestion to Rep. Ray. Mark Moffat made the <b>motion</b> to support this bill in concept and to change the words "commercial burglary". Paul Boyden <b>seconded</b> the motion, which <b>passed unanimously</b>.</p>
<b>Agenda Item</b>	<b>Position Statements</b>
<b>Notes</b>	<p>Carlene stated she would like the Commission to put together specific and uniform stated positions to explain the Commission's guiding principles, as we look forward to the 2012 legislative session. The following members volunteered to serve on a subcommittee to work on this: Judge Orme, Ron Gordon, Susan Burke, Sy Snarr, Mark Moffat and Carlene Walker.</p>
<b>Agenda Item</b>	<b>Schedule for 2012</b>
<b>Notes</b>	<p>Carlene drew attention to the 2012 Sentencing Commission meeting schedule included in the handouts packet. Please mark your calendars for the following dates: January 4, 2012, April 4, 2012 (Annual Meeting), June 6, 2012, September 5, 2012, November 7, 2012, December 5, 2012</p>
<b>Agenda Item</b>	<b>Other</b>
<b>Notes</b>	<p>Jacey scheduled a field trip for the Sentencing Commission to visit the Juvenile Parole Board in Ogden on October 19th; however, that is interim day. Jacey will schedule another date and notify the Commission.</p>
<b>Next Meeting</b>	The next meeting will be on Nov. 2, 2011, Utah State Capitol Complex, Senate Bldg., Copper Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ